

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MALIBU MEDIA, LLC,

Plaintiff,

v.

Subscriber 89133, *et al.*,

Defendant.

Civil Action No.

4:18-cv-02488

Hon. Lynn N. Hughes
United States District Judge

PAUL S. BEIK (Tx. Bar No. 24054444)
S.D. Tex. ID No. 642213
BEIK LAW FIRM, PLLC
Attorneys for the Plaintiff
8100 Washington Ave., Suite 1000
Houston, TX 77007
Tel: 713-869-6975
Fax: 713-868-2262
E-mail: paul@beiklaw.com

ERIC C. GRIMM (Tx. Bar No. 00787596)
S.D. Tex. ID No. 33793
ERIC C. GRIMM, PLLC
Attorneys for Subscriber 89133
3919 Essex Ln. Unit 210
Houston, TX 77027
Tel: (734) 717-4900
Fax: (888) 502-1291
Email: ecgrimm@umich.edu

STATUS REPORT

Malibu and Poropat have not agreed on joint language. The Parties met with the Court on January 9, 2019. By Order dated January 10 (ECF Entry No. 30), the Court directed the parties to talk and to submit a joint report about status and next steps, on or before February 6, 2019.

On January 9, 2019, Poropat and counsel communicated by email with Malibu's counsel, provided information about past and present users on the Poropats' network other than Mr. and Mrs. Poropat, and also included a settlement proposal, tracking the discussion with the Court on 1/9/2019.

Malibu responded on January 23, 2019, with an email of its own, clearly rejected Mr. Poropat's settlement proposal, and made a settlement demand at least two orders of magnitude larger than Poropat's proposal. Malibu, instead of making any meaningful factual disclosure in its email,

asserted the “black box” argument once again, by claiming to have “evidence” other than the bare allegation that was determined to be categorically insufficient in Cobbler Nevada, LLC v. Gonzales, 901 F.3d 1142, 1142, 1146 (9th Cir. 2018), while insisting that Malibu would not disclose its phantom “evidence” until after “discovery” commences (in other words, until Malibu is handed *carte blanche* to run up Poropat’s bills for nuisance purposes, whether or not Poropat downloaded anything). On January 29, 2019, Poropat’s legal counsel sent a short email to Malibu’s counsel, inquiring about the mechanics of submitting a joint report to the Court. Poropat did not haggle with Malibu over price. Given Malibu’s demand, Poropat is not interested in positional bargaining (“haggling”).¹ Counsel spoke again on February 5, 2019, by telephone.

The BATNA (best alternative to a negotiated agreement)² of both parties is to continue with a lawsuit – which if the case goes all the way to trial, could be very expensive for everyone. Poropat acknowledges that Malibu has demanded far less than it would cost to defend this case successfully, and vastly less than the large statutory damages demanded by Malibu in Malibu’s complaint.

Then again, paying anything, from Poropat’s perspective, is too much, because Poropat insists he is the wrong defendant, and did not download any Malibu movies, by BitTorrent or otherwise. And Malibu has chosen to demand much more than Poropat is willing to offer.

Poropat has filed a Motion to Dismiss (ECF Entry 31, 32), based on the Cobbler Nevada legal standard, which we think offers the right method of proceeding in this case. Accordingly, Poropat’s proposal for “next steps” is already on file, in writing, for the Court to consider. When

¹See ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING TO AGREEMENT WITHOUT GIVING IN (2nd Edition, Penguin Books, ed. 1991) (explaining why positional bargaining tends not to work).

²See ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING TO AGREEMENT WITHOUT GIVING IN (2nd Edition, Penguin Books, ed. 1991) (introducing concept of “BATNA”).

we next meet with the Court, legal counsel for each party will have a proposal for how to proceed, as the case does not appear likely to settle through further haggling over price.

February 6, 2019

Respectfully submitted,

/s/ Eric C. Grimm
ERIC C. GRIMM (Tx. Bar No. 00787596)
S.D. Tex. ID No. 33793
ERIC C. GRIMM, PLLC
Attorneys for Subscriber 89133
3919 Essex Ln. Unit 210
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Tel: (734) 717-4900
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Email: ecgrimm@umich.edu